

AUG 24 1998

Before the
Federal Communications Commission
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Revision of the Commission's Rules to Ensure) CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency)
Calling Systems)

To: The Commission

REPLY COMMENTS OF BELL SOUTH CORPORATION

BellSouth Corporation ("BellSouth"), by its attorneys, hereby replies to those comments submitted in response to the Commission's *Public Notice*, "Wireless Telecommunications Bureau Seeks Comment on Request for an Emergency Declaratory Ruling Filed Regarding Wireless Enhanced 911 Rulemaking Proceeding," DA 98-1504 (July 30, 1998).¹ The record shows broad-based support for immediate action to limit the liability of wireless carriers prior to the provision of Phase I E-911 deployment,² including BellSouth's proposals to allow limited federal tariffs³ and to

¹ The *Public Notice* sought comment the State of California 9-1-1 Program Manager's request for an immediate ruling concerning immunity from liability for wireless carriers and related issues in the provision of mandatory E-911 services. See Letter Request for Emergency Declaratory Ruling from Leah A. Senitte, 9-1-1 Program Manager, Emergency Telephone Systems Section, Telecommunications Division, Department of General Services, State of California, to William F. Kennard, Chairman, Federal Communications Commission (July 20, 1998) ("Letter Request").

² See, e.g., Comments of AirTouch Communications, Inc. ("AirTouch") at 2-4; Ameritech Mobile Communications, Inc. ("Ameritech") at 1-5; AT&T Wireless, Inc. (AT&T") at 1-3; Cellular Carriers Association of California ("CCAC") at 2-4; Cellular Telecommunications Industry Association ("CTIA") at 2-5; GTE Service Corporation ("GTE") at 2-5; Nextel Communications, Inc. ("Nextel") at 4-5; Personal Communications Industry Association ("PCIA") at 2-3; Rural Telecommunications Group ("RTG") at 3-5; SBC Wireless, Inc. ("SBC") at 3-4; United States Cellular Corporation ("USCC") at 2-6; XYPOINT Corporation ("XYPOINT") at 2-3; see also Comments of Omnipoint Communications, Inc. ("Omnipoint") at 2-5; TruePosition, Inc. ("TruePosition") at 2-5. All references to comments herein are to those comments filed on or before August 14, 1998, in response to the State of California's Letter Request, unless otherwise noted.

³ See Comments of AirTouch at 4 n.7; Bell Atlantic Mobile, Inc. ("Bell Atlantic") at 2; CTIA at 4; RTG at 4-5; TruePosition at 3 & n.6; XYPOINT at 3; see also Comments of National

amend Section 20.18 to make clear that wireless carriers are not obligated to provide E-911 within a state until the state passes limitation of liability legislation.⁴

Only four commenters were directly opposed to taking action on the liability issue prior to the implementation of Phase I.⁵ Two of these supported liability protection, but objected to liability limitations being made a condition of Phase I implementation.⁶ Set forth below BellSouth addresses the principle points made by objecting parties.

- **It is “premature and speculative for the Commission to establish a national standard of liability protection in order to achieve rapid deployment of wireless E911 systems,” therefore Phase I deployment should not be “contingent upon there being a state statute to provide . . . liability immunity.” (APCO Comments at 2.)**

As BellSouth showed in its comments, the State of California’s petition removes any doubt or speculation that the failure to resolve the liability issue *is* hampering the deployment of wireless E-911 service.⁷ Not only is it not premature, the time is now to rule on this issue. As the state of

Emergency Number Association (“NENA”) at 2.

⁴ See Comments of GTE at 3-5 & n.8; RTG at 4; *see also* Comments of Ameritech at 3-4; AT&T Wireless at 3; Omnipoint at 2; PCIA at 2.

⁵ See Comments of the Association of Public-Safety Communications Officials-International, Inc. (“APCO”) at 1-3; Ad Hoc Alliance for Public Access to 911 (“Alliance”) at 2-4; California Highway Patrol (“CHP”) at 2; NENA at 2-3.

⁶ See Comments of APCO at 1-2 (“APCO has no objections to state or federal legislative efforts by the wireless industry to ensure that they have the same liability protection as wireline carriers in the provision of 9-1-1 service.”); *id.* at 3 (“APCO acknowledges that liability poses a serious issue for carriers, and we recognize that some states may choose to allow the cost of liability insurance to be recovered.”); NENA at 2 (“[CTIA] and BellSouth have suggested a means of wireless carrier ‘self-help’ — informational tariffs filed at the Commission — in states where liability protection is not available. NENA submitted largely favorable comments on the[se] proposals, which remain pending.”) (footnotes omitted).

⁷ Comments of BellSouth Corporation (“BellSouth”) at 2, 4-6.

California's petition notes: "The issue of immunity is now the *only substantive obstacle preventing trials and commercial deployment of wireless E9-1-1 service.*"⁸ Numerous commenters agree.⁹

- **"Liability insurance is not an essential element of providing enhanced 9-1-1 service and should not be a required item in cost recovery."** (APCO Comments at 2.)

To the contrary, BellSouth and others have shown that liability insurance is an essential item in providing E-911.¹⁰ Like drivers of an automobile, wireless carriers without insurance cannot provide E-911 service in the first instance. The procurement of insurance is a direct and legitimate cost associated with E-911 deployment in states with no immunity, and is no different than the costs incurred to deploy the hardware and software upgrades necessary to provide calling party number and site location, priority calling, and other elements of E-911 compatibility.¹¹ But for the Commission's E-911 mandate, wireless carriers would not be required to procure the insurance necessary to cover themselves from liability, therefore insurance costs must be recoverable.¹²

⁸ Letter Request at 1 (emphasis added).

⁹ See Comments of AirTouch at 3 ("[T]he failure to resolve [liability] issues only serves to delay implementation of E911 services."); AT&T at 2 ("[T]he lack of uniform limitations on liability is one of the most significant barriers to the implementation of wireless E-911 service."); CCAC at 4 ("The problem is not 'speculative' — resolving the liability issue will expedite the deployment of wireless E911 . . ."); CTIA at 4 ("[T]he [California] Request belies the Commission's conclusion that 'it is premature and speculative' to establish a national standard of liability protection to achieve rapid deployment of wireless E9-1-1 services."); Nextel at 4 ("[P]rotecting wireless carriers from liability *is* essential . . . since, without such protections, the provision of wireless E911 services are being delayed."); Omnipoint at 1 ("[T]he lack of adequate carrier immunity is a serious roadblock to full deployment of wireless E911 service."); SBC at 3 ("[T]he lack of liability protection can have a delaying effect on the implementation of the Phase I requirements."); XYPOINT at 2 ("The lack of immunity is an impediment to the deployment of ubiquitous wireless E9-1-1 services on a nationwide basis.").

¹⁰ BellSouth comments at 7-8; *see also* Comments of Ameritech at 4; AT&T at 4; CCAC at 5; CTIA at 5; GTE at 5; PCIA at 4; USCC at 7.

¹¹ See Comments of Ameritech at 4; GTE at 5; PCIA at 4; *see also* AT&T at 4.

¹² CCAC at 5 ("[T]he cost of purchasing insurance is a necessary component of cost recovery. It is an additional cost the carrier would not have had to bear but for the E911 mandate."); CTIA at 5 ("The liability risk of providing 9-1-1 service imposes direct costs on a carrier that would not be incurred but for the Commission's E-911 mandate. These costs necessarily include the insurance premiums at issue . . ."); USCC at 7 ("Clearly, insurance premiums will be a cost of providing E-

- **“The Commission has already considered and rejected the request of some CMRS providers to limit their costs of providing 911 service by preempting [state law].” (Alliance Comments at 1-2.)**

The Alliance ignores the fact that neither of BellSouth’s pending proposals to limit wireless carriers’ E-911 liability requests or requires the preemption of state law. BellSouth has proposed that the Commission amend Section 20.18 of its rules, 47 C.F.R. § 20.18, to make clear that carriers should not be required to provide E-911 within a state until that state enacts appropriate limitation of liability legislation, and that carriers be permitted to file federal tariffs governing the terms and conditions of E-911 service.¹³ Neither of these two solutions requires a preemption of state law, and collectively, both will serve to obviate the costly insurance issue now faced by California.

- **The request for reimbursement of insurance costs “appears to be a thinly veiled attempt to avoid the cost of . . . liability for negligence in providing 911 service.” (Alliance Comments at 2.)**

No such attempt is being made. As a preliminary matter, the Commission has already recognized that the recovery of costs is an essential element of Phase I implementation.¹⁴ Second, BellSouth has already shown that there is Commission precedent for the recovery of insurance costs,¹⁵ especially when those costs would not have been incurred but for the Commission’s E-911 mandate. Third, BellSouth and others are not seeking any more protection than that already provided to wireline carriers in their provision of 911 service.¹⁶

911 service, since they would not have to be paid but for the provision of such service.”).

¹³ See Comments of BellSouth at 5-6 (citing BellSouth Petition for Reconsideration at 3-7 (Feb. 17, 1998)).

¹⁴ See 47 C.F.R. § 20.18(f).

¹⁵ Comments of BellSouth at 6-8 (citing *800 Data Base Access Tariffs*, CC Docket No. 93-129, 11 F.C.C.R. 15227, 15250-51 (1996), *recon. granted in part on other grounds*, 12 F.C.C.R. 5188 (1997); *TCI Cablevision*, 12 F.C.C.R. 15287, 15296-97 (Cable Serv. Bur. 1997)).

¹⁶ See, e.g., Comments of Omnipoint at 2-3; PCIA at 3; *see also* Comments of Nextel at 3.

- **Insuring carriers against liability is unnecessary because “there are other alternatives available to CMRS providers to shield themselves from liability when providing mandated [E-911] service.” (Alliance Comments at 3.)**

As BellSouth and others have now repeatedly established,¹⁷ the other alternative provided by the Commission — contracts with subscribers¹⁸ — is insufficient to provide liability protection against non-subscribers with whom wireless carriers have no privity of contract. CCAC, for example, notes that an increasing number of wireless transactions are paperless and completed electronically, in which case there is no written contract to limit liability.¹⁹ The Commission has even recognized that “it would appear reasonable for a carrier to attempt to make the use of its network by a non-subscriber subject to the carrier’s terms and conditions for liability.”²⁰ Clearly, something more than indemnification language in subscriber contracts is required, as the California petition demonstrates.

- **Local exchange carrier (“LEC”) immunity should not be extended to wireless carriers because “LECs are rate-regulated and limitation of liability tariff provisions are part and parcel of rate regulation.” (Alliance Comments at 3.)**

BellSouth has previously shown the fallacy underlying this argument.²¹ The differences in regulatory treatment between LECs and CMRS carriers with regard to rate regulation are irrelevant to the issue of liability protection in the provision of 911 service. In fact, wireless carriers *are*

¹⁷ See Comments of BellSouth at 3-4 & n.11 (citing commenting parties); *see also* Comments of Bell Atlantic Mobile at 2-3; CCAC at 3; CTIA at 4; SBC at 3; USCC at 4.

¹⁸ See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Report and Order and Further Notice of Proposed Rulemaking*, 11 F.C.C.R. 18676, 18727 (1996) (*R&O*), *recon.*, 12 F.C.C.R. 22665 (1997).

¹⁹ Comments of CCAC at 3.

²⁰ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Memorandum Opinion and Order*, 12 F.C.C.R. 22665, 22733 (1997) (*Reconsideration Order*) (footnotes omitted).

²¹ See BellSouth Reply at 3 & n.8 (Apr. 1, 1998).

regulated similarly to LECs in the requirement to provide E-911 service, yet wireless carriers do not enjoy the same liability protections as their LEC counterparts.²²

- **Under the “law of the marketplace,” it is “not appropriate to confer the benefits, but not the costs and responsibilities, of deregulation.” (Alliance Comments at 3.)**

While some aspects of the wireless marketplace may be “deregulated,” the Commission’s mandate to provide E-911 service is the very essence of regulation. In a non-regulated market, exposure to liability may be an acceptable risk of doing business, but the Commission’s E-911 mandate has, in one carrier’s words, “foreclosed such risk calculation.”²³ BellSouth thus agrees with the comments of TruePosition:

As a direct result of Commission actions, . . . carriers will necessarily be exposed to greater risk than they would be willing to suffer in the normal course of business. Given the Commission’s mandate, and the public interest benefits associated with E911 service, it is incumbent upon the Commission to afford carriers traditional protections from liability concomitant with the extension of E911 carriage regulations to non-subscribers.²⁴

²² See, e.g., Comments of Nextel at 3; RTG at 3; SBC at 2.

²³ Comments of TruePosition at 4.


²⁴ *Id.*; see also Comments of Omnipoint at 2-3 & n.2 (citing precedent that the regulatory obligation to provide E-911 brings an equitable trade-off that requires a concomitant limitation on liability); PCIA at 2-3 (“As a result of the Commission’s mandate, carriers will be exposed to a much greater liability risk than normal. This fact alone warrants the recognition that carriers are entitled to immunity from liability.”).

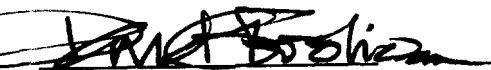
CONCLUSION

For the foregoing reasons, BellSouth respectfully requests that the Commission resolve the liability issues addressed herein consistent with BellSouth's pending petition for reconsideration and its earlier comments in this proceeding.

Respectfully submitted,

BELLSOUTH CORPORATION

By: 
William B. Barfield
Jim O. Llewellyn
1155 Peachtree Street, NE, Suite 1800
Atlanta, GA 30309-2641
(404) 249-4445

By: 
David G. Frolio
1133 21st Street, NW, Suite 900
Washington, DC 20036
(202) 463-4182

Its Attorneys

August 24, 1998

CERTIFICATE OF SERVICE

I, Deanna Susens, hereby certify that on this 24th day of August, 1998, copies of the foregoing "Reply Comments of BellSouth Corporation" in response to DA 98-1504 in CC Docket No. 94-102 were served via first-class United States mail, postage prepaid, upon the following:

Chairman William E. Kennard*
Federal Communications Commission
1919 M Street,
Room 814
Washington, D.C. 20554

Commissioner Gloria Tristani*
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, DC 20554

Commissioner Michael Powell*
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, DC 20554

Commissioner Harold Furchgott-Roth*
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, DC 20554

Commissioner Susan Ness*
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, DC 20554

Daniel Python, Chief*
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, DC 20554

John Cimko*
Chief, Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

Won Kim*
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7112-B
Washington, D.C. 20554

S.C. Wilkins
California Highway Patrol
P.O. Box 94298
Sacramento, CA 94298-0001

Robert M. Gurss
Wilkes, Artis, Hedrick & Lane, Chartered
1666 K Street, N.W., #1100
Washington, D.C. 20006

James R. Hobson
Donelan, Cleary, Wood & Maser P.C.
1100 New York, Avenue, N.W., #750
Washington, D.C. 20005-3935

Reuven M. Carlyle
XYPOINT Corp.
2825 Eastlake Avenue, East, Suite 250
Seattle, WA 98102

Robert S. Foosaner
Lawrence R. Krevor
Laura L. Holloway
Nextel Communications, Inc.
1460 G Street, N.W.
Suite 425
Washington, D.C. 20005

Richard J. Quist, Jr.
Betsey Stover Granger
SBC Wireless, Inc.
4420 Rosewood Drive
4th Floor, Building 2
Pleasanton, CA 94588

Carol L. Tacker
SBC Wireless, Inc.
17330 Preston Road
Suite 100A
Dallas, TX 75252

Bruce Beard
SBC Wireless, Inc.
13075 Manchester Road
Suite 100
St. Louis, MO 63131

Jay L. Birnbaum
Jennifer P. Brovey
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005

Caressa D. Bennet
Dorothy E. Cukier
Bennet & Bennet, PLLC
1019 19th Street, N.W.
Suite 500
Washington, D.C. 20036

Michael B. Day
Jeanne M. Bennett
Goodin, MacBride, Squeri,
Schlotz & Ritchie, LLP
505 Sansome Street
Suite 900
San Francisco, CA 94111

Stephen E. Carlson
Cellular Carriers Association of California
1225 Eight Street
Suite 550
Sacramento, CA 95814

John T. Scott, III
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Pamela J. Riley
David A. Gross
AirTouch Communications, Inc.
1818 N Street, N.W.
Washington, D.C. 20036

Joyce H. Jones
Kim Mahoney
AirTouch Communications, Inc.
One California Street, 29th Floor
San Francisco, CA 94111

Michael Altschul
Randall S. Coleman
Lolita D. Smith
Cellular Telecommunications Industry
Association
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036

John Prendergast
Susan J. Bahr
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, N.W.
Washington, D.C. 20037

Philip L. Verveer
David M. Don
Willkie Farr & Gallagher
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20036

John F. Raposa
GTE Service Corporation
600 Hidden Ridge, HQE3J27
P.O. Box 152092
Irving, TX 75015-2092

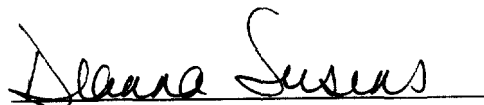
Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Washington, D.C. 20036

Mark J. O'Connor
Piper & Marbury L.L.P.
1220 19th Street, N.W.
Suite 700
Washington, D.C. 20036

Douglas I. Brandon
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

Peter M. Connolly
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

Mary McDermott
Mary E. Madigan
Todd B. Lantor
Personal Communications Industry
Association
500 Montgomery Street
Suite 700
Alexandria, VA 22314-1561


Deanna Susens

* By Hand